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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 THE BOARD OF TRUSTEES, in their  
18 capacities as Trustees of the APARTMENT  
19 EMPLOYEES PENSION FUND,

20 Plaintiffs,

21 v.

22 PROFESSIONAL TECHNICAL  
23 ("PROTECH") SECURITY SERVICES, INC.,  
24 a Delaware Corporation; and DOES 1 through  
25 10,

26 Defendants.  
27  
28

No.

**COMPLAINT FOR WITHDRAWAL  
LIABILITY**

1 Plaintiffs complain of Defendant, and for cause of action allege:

2 **JURISDICTION AND INTRADISTRICT ASSIGNMENT**

3 **I.**

4 This action arises under and is brought pursuant to section 502 of the Employee  
5 Retirement Income Security Act, as amended (ERISA) (29 U.S.C. § 1132), and section 301 of the  
6 Labor Management Relations Act (LMRA) (29 U.S.C. § 185). Venue properly lies in this district  
7 court because contributions are due and payable in the County of San Francisco.

8 **PARTIES**

9 **II.**

10 Plaintiffs, the Board of Trustees, are trustees of the Apartment Employees Pension Fund  
11 (“Pension Fund”). The Pension Fund is an employee benefit plan created by a written Trust  
12 Agreement subject to and pursuant to section 302 of the LMRA (29 U.S.C. § 186), and  
13 multiemployer employee benefit plan within the meaning of sections 3, 4 and 502 of ERISA (29  
14 U.S.C. §§ 1002, 1003 and 1132). The Pension Fund is maintained for the purpose of providing  
15 retirement benefits to plan participants. The Board of Trustees administers the Pension Fund and  
16 may bring this action in the name of the Pension Fund pursuant to the express provisions of the  
17 Trust Agreement.

18 **III.**

19 Defendant Professional Technical Security Services, Inc. (“ProTech”), is a corporation  
20 incorporated under the laws of the State of Delaware and has its principal place of business in  
21 California. ProTech has been an employer within the meaning of section 3(5) and section 515 of  
22 ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an industry affecting commerce within  
23 the meaning of section 301 of the LMRA (29 U.S.C. § 185).

24 **IV.**

25 Plaintiff is ignorant of the true names and capacities of DOE Defendants sued herein as  
26 DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names.  
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

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**ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF****V.**

ProTech was signatory and bound to a written collective bargaining agreement (“CBA”) with the Service Employees International Union, United Service Workers West (“Union”), a labor organization within the meaning of section 301 of the LMRA (29 U.S.C. § 185). ProTech became subject to all the terms and conditions of the Trust Agreement establishing the Pension Fund by signing the CBA with the Union.

**VI.**

Pursuant to Section 4001(b) of ERISA (29 U.S.C. § 1301(b)), all trades or businesses under common control are a single employer for purposes of Title IV of ERISA (29 U.S.C. § 4001 et seq.), which governs the termination of employee benefit plans. At all times relevant, DOE Defendants 1 through 10, inclusive, were trades or businesses under common management, control, ownership, and operation, or a single employer under federal law with ProTech. Accordingly, ProTech and DOES 1 through 10, inclusive, constituted a commonly controlled group of trades or businesses and were a single employer pursuant to Section 4001(b) of ERISA (29 U.S.C. § 1301(b)). As such, ProTech and DOES 1 through 10 are each jointly and severally liable for any obligations to the Pension Fund that ProTech has incurred pursuant to Title IV of ERISA (29 U.S.C. § 4001 et seq.).

**VII.**

The CBA and Trust Agreement provide for prompt payments of all employer contributions to the Trust Funds and provide for liquidated damages, not as a penalty but as a reasonable attempt to provide for payments to cover the damages incurred by the Trust Funds in the event of a breach by the employer where it would have been impracticable or extremely difficult to ascertain the losses to the Trust Funds. The Trust Agreement also provides for the payment of interest on all delinquent contributions, attorneys' fees, and other collection costs.

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**FIRST CLAIM FOR RELIEF**  
**(WITHDRAWAL LIABILITY)**  
**VIII.**

Plaintiff incorporates and realleges by reference all the allegations stated hereinabove.

**IX.**

ERISA Section 4201 (29 U.S.C. § 1381) provides that the Trustees shall have the authority to assess withdrawal liability against contributing employers who withdraw from participation in the Pension Fund for any reason. Withdrawal liability shall be determined as set forth in ERISA and the Pension Fund's governing documents. Withdrawal liability shall be due and payable by the employer upon demand by the Pension Fund.

**X.**

In 2018, ProTech withdrew participation from the Pension Fund and ceased to contribute to the Pension Fund with respect to the work of its employees, thereby completely withdrawing from the Pension Fund.

**XI.**

Pursuant to ERISA Sections 4202 and 4219 (29.U.S.C. §§ 1382, 1399), the Pension Fund calculated the amount of ProTech's withdrawal liability to be \$74,566. Under the payment schedule, ProTech was required to make quarterly payments of \$5,759 commencing on February 4, 2019, plus a final payment of \$849 due on August 31, 2022.

**XII.**

As a single employer, DOE Defendants 1 through 10, and any other trades or businesses under common control, are jointly and severally liable for ProTech's withdrawal liability.

**XIII.**

On January 9, 2019, the Pension Fund notified ProTech that its withdrawal liability to Plaintiff was \$74,566, and demanded payment. Notice to ProTech constituted notice to all trades or businesses under common control with ProTech, including DOE Defendants 1 through 10. The notice also informed Defendants of their right to make a lump sum payment of the entire amount or make payments according to the payment schedule. The notice informed Defendants of their right to request a review of the withdrawal liability determination, and that they must make their

1 payments to the Pension Fund even if Defendants requested a review of the withdrawal liability  
 2 determination. The notice informed Defendants of the components of the withdrawal liability and  
 3 included documentation.

4 **XIV.**

5 Defendants have failed to make one or more of the required payments of withdrawal  
 6 liability to the Pension Trust, including the quarterly payments that were due February 4, 2019,  
 7 May 4, 2019, August 4, 2019, and November 4, 2019.

8 **XV.**

9 On March 21, 2019, the Pension Fund notified ProTech that it failed to submit its first  
 10 quarterly payment, and that ProTech would be in default if the overdue payments were not  
 11 received within 60 days of the letter. Notice to ProTech constituted notice to all trades or  
 12 businesses under common control with ProTech, including DOE Defendants 1 through 10.

13 **XVI.**

14 Defendants failed, refused, and neglected to submit the overdue withdrawal liability  
 15 payments.

16 **XVII.**

17 Pursuant to ERISA Sections 515, 4219(c)(5), and 4301(b) of ERISA (29 U.S.C. §1145,  
 18 1399(c)(5), 1451(b)) and the Pension Trust Agreement, Defendants' failure to make a withdrawal  
 19 liability payment is considered a default and shall be treated in the same manner as a delinquent  
 20 contribution. ERISA Section 4219(c)(5) (29 U.S.C. §1399(c)(5)) provides that in the event of a  
 21 default, a plan sponsor may require immediate payment of the entire amount of outstanding  
 22 withdrawal liability, plus accrued interest on that total amount of outstanding liability from the  
 23 due date of the first payment which was not timely made.

24 **XVIII.**

25 Because Defendants failed to remit its outstanding withdrawal liability, Plaintiffs are  
 26 forced to bring the present action to collect withdrawal liability plus interest, liquidated damages,  
 27 attorneys' fees and costs and such other legal or equitable relief as the Court deems appropriate.

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**XIX.**

Defendant failed to request a review of the withdrawal liability determination pursuant to ERISA §4219(b), and has therefore waived all defenses to this action.

**XX.**

By reason of the foregoing, Defendants are indebted to Plaintiffs for \$74,566, together with interest thereon, liquidated damages, attorney's fees, and other costs in accordance with the Pension Trust Agreement and Sections 4301(b) and 502(g) of ERISA (29 U.S.C. §§ 1451(b), 1132(g)).

**WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. That Defendants be ordered to pay withdrawal liability of at least \$74,566, plus interest thereon;
2. That Defendants be ordered to pay actual damages according to proof;
3. That Defendants be ordered to pay attorneys' fees;
4. That Defendants be ordered to pay costs of suit herein; and
5. That this Court grant such further relief as this Court deems just and proper.

Dated: January 14, 2020

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

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